

File: regulatory reformLEGISLATIVE ANALYSIS~~Copy~~
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FileBill No. H.R. 220 Report No. _____ Companion No. _____Title: Regulatory Procedure Act of 1982

Subject: _____

Amends. 5 U.S.C., Chapters 5 & 6

Contacts: _____

Conclusion: ☒ No Agency objection☐ Agency objection and/or needs amendment

Analysis: This piece of legislation is a regulatory reform bill. Its sponsors, Representatives Levitas, Sam B. Hall and Kindness, obtained a provision in the rule of the 97th Congress, 2nd Session, on that Congress' regulatory reform bill, which would have permitted essentially this bill to be substituted for the bill which was the subject of the rule. As with last Congress' ~~bill~~, this bill makes some changes in the regulatory issuance process, 'streamlines it, puts it more under the President's control, limits judicial review, limits the issuance of "major rules" and provides for Congressional veto of regulatory issuances.

The bill does, however, contain language necessary to exclude the Agency's rules from the scope of the bill.

Most of the above-mentioned reforms are set forth in three new subchapters to be added to Chapter 6 of Title 5 by Section 101 (c) of the Bill; these are Subchapters II, III and IV. In Subchapter II, Section 621 (a), when read together with (a) (5) and (a) (5) (D), exclude from the definition of "rule", the operative definition for Subchapters II, III and IV, a rule described in section 553 (a) of Title 5. Section 55 (a), as amended by the bill and as found in current law, contains an exclusion for "military or foreign affairs functions", the exclusion on which the Agency currently relies for nonpublication of its regulations. Thus, the Agency would be excluded from the new Subchapters II, III and IV of the bill.

The bill also amends Section 553 but in doing so, retains the current "military or foreign affairs function" exception on which the Agency relies.

Congressional review of agency regulations is established by creation of a new chapter for Title 5, Chapter 8. The Agency's rules, however, are excluded from the operation of Chapter 8's operative sections, Sections 802 and 803. This exclusion is accomplished by a reading together of Section 801 (a) (2) ~~together~~ with (b) (1) (B) which exempt from the operation of Sections 802 and 803 rules involving "military or foreign affairs" functions.

STAT (name) The above would not prevent the Congress from adopting, under resolution for reconsideration directing the Agency to

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(as proposed)

"reconsider" a rule it had promulgated.¹ As the practical likelihood is remote, however, I conclude that the Agency should not object to the bill on these grounds: if the executive is to fight the issue of Congressional review of executive branch regulations, the fight should not be over Agency rules or over Congressional resolutions directing reconsideration as opposed to disapproval.

In sum, there is nothing in this Bill to which the Agency should object. The current exclusion from the Administrative Procedures Act rulemaking provisions are preserved by the Bill and the new procedures which the bill introduces virtually exclude the Agency from their operation.